

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

TYRONE D. OLIVER,)
)
)
Plaintiff,)
)
)
v.) **1:09CV737**
)
)
HOWARD MILLER CO., et al.,)
)
)
Defendant(s).)

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On September 25, 2009, Plaintiff Tyrone D. Oliver filed a civil action in this Court and requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Plaintiff sues Howard Miller Co. and other Defendants for alleged employment discrimination. Plaintiff seeks monetary damages.

In *Neitzke v. Williams*, 490 U.S. 319 (1989), the United States Supreme Court held that a district court may dismiss the complaint of a *pro se* litigant under 28 U.S.C. § 1915(e)(2)(B) when the complaint lacks “an arguable basis either in law or in fact.” *Id.* at 325. *Neitzke* explained that “[§ 1915(e)(2)(B)] accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Id.* at 327. Additionally, under *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992), a court may dismiss as frivolous *in forma pauperis*

complaints whose factual allegations are fanciful, fantastic, delusional, irrational, or wholly incredible, but not those which are simply unlikely.

The Court concludes that Plaintiff Oliver's complaint is subject to dismissal under *Neitzke* for failure to state a legal claim. Plaintiff's current complaint obviously fails to state a cause of action when reviewed under the test of *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1947 (2009). He has done nothing more than assert discrimination and cite federal statutes, without the slightest factual showing that might demonstrate a plausible cause of action. As such, he states no legal claim.

For these reasons, **IT IS RECOMMENDED** that *in forma pauperis* status be granted and that Plaintiff's complaint be dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii).

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: October 6, 2009